

**Memorandum of Agreement  
between the U.S. Coast Guard, the Maritime Administration,  
and the California State Lands Commission  
for the Review of Deepwater Ports License Applications**

This Memorandum of Agreement (hereinafter referred to as Agreement or MOA) is entered into as of the date of the last signature attached hereto by and between the following agencies (hereinafter referred to as the parties):

U.S. Coast Guard, hereinafter referred to as USCG;

Maritime Administration acting by delegation of the U.S. Secretary of Transportation, hereinafter referred to as MARAD; and

California State Lands Commission hereinafter referred to as CSLC.

WHEREAS, the Deepwater Ports Act (DWPA) of 1974, as amended by the Maritime Transportation Security Act (MTSA) of 2002, provides for the licensing of oil and natural gas deepwater ports in maritime waters in the exclusive economic zone by the Secretary of Transportation, and the DWPA requires the approval of the governor of the adjacent coastal State in the processing of each deepwater port license application; and

WHEREAS, Section 6 of DWPA (33 U.S.C. § 1505), requires the Commandant of the USCG to establish environmental review criteria for use in evaluating a proposed deepwater port; and

WHEREAS, the DWPA requires compliance with the National Environmental Policy Act (42 U.S.C. § 4321 et seq., hereinafter referred to as NEPA) and other Federal environmental requirements in the processing of deepwater port license applications; NEPA requires compliance with other Federal, State, and local law and requirements for the protection of the environment; and

WHEREAS, the U.S. Secretary of Transportation has delegated the processing of an application for a deepwater port to MARAD in the U.S. Department of Transportation; the USCG has retained its authority and role in processing these applications with its transfer to the Department of Homeland Security;

WHEREAS, the U.S. Secretary of Transportation has also delegated the responsibility for the issuance of a record of decision and license for a deepwater port to MARAD, and the environmental review is an integral part of the record of decision; and

WHEREAS, the USCG and MARAD have determined that approval of a deepwater port license application may constitute a major Federal action significantly affecting the quality of the human environment pursuant to NEPA, and if that is the case, that an Environmental Impact Statement (EIS) should be prepared to analyze the potential impacts of each deepwater port project; and

WHEREAS, portions of a deepwater port project may have "substantial adverse impact" (as defined by the California Environmental Quality Act, California Public Resources Code § 21000 et seq., hereinafter referred to as CEQA), which must be considered by State and local agencies when reviewing and acting on projects pursuant to the CEQA and other applicable State laws; and

WHEREAS, BHP Billiton, hereinafter referred to as BHP, has submitted an application for a license to construct and operate a liquefied natural gas (LNG) regasification facility (hereinafter referred to as Cabrillo Port); and other companies have made public announcements of their intent to submit applications to construct and operate deepwater ports off the coast line of California; and

WHEREAS BHP has submitted an application to the CSLC for a General Lease-Right of Way Use for a proposed 30-inch pipeline that would transport natural gas from the Cabrillo Port, located in Federal waters, through State waters to an onshore location at Ormond Beach; and other companies have made public announcements of their intent to submit similar applications for pipeline rights-of-way on State lands; and

WHEREAS, pursuant to the CEQA, the CSLC has determined that it is the State Lead Agency for the proposed BHP Cabrillo Port Project and other deepwater port projects affecting State lands, and that an Environmental Impact Report (EIR) should be prepared to analyze the potential impacts of each deepwater port project; and

WHEREAS the parties to this Agreement desire to prepare environmental documents for each deepwater port license application that would include all relevant information on the specific project plan; and

WHEREAS, it is in the mutual beneficial interest of all parties to share in the task of preparation of an environmental study for each deepwater port in California in order to avoid duplication in staff efforts, to share staff expertise and information already existing, to promote intergovernmental coordination at the local, State, and Federal levels, and to serve the public interest by producing a more efficient environmental review process;

NOW, THEREFORE, in consideration of the mutual covenants and conditions hereinafter set forth, it is agreed as follows:

## **A. AUTHORITIES AND RESPONSIBILITIES OF THE PARTIES**

The DWPA requires compliance with NEPA and other Federal environmental requirements in the processing of deepwater port license applications. The DWPA further provides that the NEPA analysis conducted by the U.S. Secretary of Transportation (or for him by the USCG) shall be the only NEPA document required for Federal agencies taking actions with regard to DWPA license applications. The USCG has been delegated the responsibility for NEPA compliance advice to the U.S.

Secretary of Transportation. That duty remained with the USCG when it transitioned to the Department of Homeland Security.

The CSLC, which has broad discretion in all aspects of the leasing of lands under its jurisdiction, must comply with the CEQA when it undertakes an activity defined by the CEQA as a "project." The CSLC may delegate authority to its Executive Officer to solicit proposals for consultant services, negotiate fair and reasonable price, award and execute necessary agreements to prepare the environmental documentation required for consideration of deepwater port projects and associated offshore and onshore facilities.

This Agreement does not subjugate any USCG regulatory authorities or responsibilities, or those of the CSLC, but serves to clarify roles and responsibilities in the license review process. In this regard, the USCG and the CSLC agree to work together as joint lead agencies in the execution of their respective responsibilities in meeting NEPA and CEQA requirements for the review of the potential for impacts to the environment from proposed deepwater port licenses in California. In this joint lead relationship, the USCG will have primary responsibility for meeting NEPA requirements, and the CSLC will have primary responsibility for meeting CEQA requirements. As joint lead agencies, both the USCG and CSLC agree that they will work together to produce a single environmental review document for each license application review, and any necessary subsequent supplements or revisions, that meets the requirements of both the NEPA and the CEQA.

## **B. JOINT RESPONSIBILITIES**

The USCG and CSLC will:

1. Make every effort to meet legally mandated schedules for completing the application review process dictated by the 21 days for Federal application completeness review,<sup>1</sup> a maximum of 240 days for Federal license application processing and convening the final public hearing/meeting on the application including completion of all NEPA/CEQA related hearing/meeting and document publication. Following the final public hearing/meeting, the DWPA mandates 90 days for determination of license approval/denial, including 45 days for final agency comment on the application and 45 days to make the final administrative determination on the application.
2. Provide the other parties with a listing containing names and contact information for subject matter experts within Federal and State agencies available to assist in the parties' NEPA/CEQA activities.
3. Jointly develop solicitations for consultant services, select a consultant to prepare each environmental document, and develop joint schedules with milestones for

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<sup>1</sup> To the best of its ability, the CSLC staff will coordinate its review of the Federal DWPA application with its State requirement to perform a completeness review within 30 days of receipt of the CSLC application.

the processing of license/lease applications that incorporate time for NEPA and CEQA efforts. The parties will ensure that contractual measures for each project are taken to allow the USCG and the CSLC to use any and all consultant data in preparation of separate or additional NEPA/CEQA documents for that project, should such efforts become necessary.

4. Immediately share data that is critical to the development of NEPA/CEQA documents and in meeting port application processing schedules, and ensure that data requested of the applicant by any party is obtained promptly and forwarded to the other parties for review and acceptance. To the maximum extent allowed by law, prior to public release of any joint NEPA/CEQA documents, discussions and records related to preparation of the documents—e.g., about alternatives, impact levels, comments on document language, and/or mitigation—including meeting notes, shall remain privileged among the parties to this Agreement as well as among other cooperating or responsible agencies that are subject to or have signed interagency agreements with similar Federal or State confidentiality requirements.

5. Engage in formal and informal discussions as needed to ensure open communication of issues impacting the NEPA/CEQA process and shall keep each other advised of developments affecting the preparation of any joint NEPA/CEQA document. Both parties recognize that this communication is essential for the successful preparation of any joint NEPA/CEQA document.

6. Jointly determine the need to engage with the applicant to resolve specific issues or request additional information.

7. Protect information submitted by the Project applicant(s) that is designated as confidential, and that the parties to this Agreement determine is exempt from public disclosure under the Freedom of Information Act (FOIA) or the California Public Records Act (Government Code § 6250 et seq.) and other applicable law, from public disclosure in accordance with applicable law. Where applicable, the Project applicant(s) shall be required to clearly stamp such information as 'Confidential.'

8. Jointly determine the need to suspend processing of a license application to maintain concurrent schedules to meet NEPA, CEQA, and DWPA requirements.

9. Identify staff members to work together on the joint development and processing of the NEPA and CEQA document for each application.

10. Perform the more detailed tasks listed in Appendices in addition to those described in the main body of this Agreement.

11. Participate in the initial phases of the scoping processes to ensure that the proper range of issues is determined and to identify information requirements early in the joint NEPA/CEQA document preparation processes.

12. Provide written comments on and recommendations for improvement of the interim draft, draft, and interim final copies of the joint NEPA/CEQA documents where any of the subject documents are found to be incomplete, inadequate, or inaccurate.

### **C. USCG RESPONSIBILITIES**

Subject to the provisions of this Agreement and applicable law and regulations, the USCG is the lead agency for NEPA compliance and preparation of necessary NEPA documents for deepwater ports. In this capacity, the USCG will:

1. Designate a primary point of contact for matters related to this Agreement.
2. During the initial 21-day review period, allow the CSLC to review the application for “completeness” and to identify to the USCG, missing data, corrections to incorrect data, and additional information to supplement the application before it is deemed acceptable by the USCG and MARAD.
3. Determine whether an application appears to contain all required information prior to publishing notice of the application in the Federal Register.
4. Determine if additional information is needed for completing the application review, including the NEPA analysis, and if necessary suspend the processing of the application until such information is provided.
5. Use the environmental analysis, mitigations, and proposals prepared by the CSLC on issues over which it has jurisdiction by law or special expertise, to the maximum extent possible, consistent with the Coast Guard’s responsibility as the lead agency under the NEPA.

### **D. CSLC RESPONSIBILITIES**

Subject to the provisions of this Agreement and applicable law and regulations, the CSLC is a joint lead agency for CEQA compliance and preparation of necessary CEQA documents for deepwater ports. In this capacity, the CSLC will:

1. Designate a primary point of contact in headquarters and regional offices for matters related to this Agreement.
2. Participate in pre-application meetings with a prospective deepwater port applicant to assist in the development of the application, its environmental report, and other necessary information submittals.
3. Perform a completeness review of the deepwater port application within ten (10) working days of receipt of the document and provide the USCG with written

comments specifying that the application is either complete or that it is deficient due to absence of noted items or contains erroneous information.

4. At the earliest possible time, notify the USCG of the need for additional information to complete the required analyses.

5. Recommend mitigations to avoid or reduce impacts.

As the agency holding the joint NEPA/CEQA consultant's contract, the CSLC shall keep the USCG fully informed of all issues pertinent to document preparation.

## **E. MANAGEMENT OF THE CONSULTANT**

The CSLC will manage the consultant on a day-to-day basis and shall keep the USCG apprised of such activity. The CSLC will process all consultant invoices. Direction of the consultant in the preparation of the EIS/EIR shall be provided jointly by the designees provided in C.1 and D.1 of this Agreement.

Exchange of technical information between the consultant and the parties to this Agreement shall be allowed, but copies of information exchanged shall be provided promptly to the other party. The consultant shall inform the parties of such contacts on a routine basis; this requirement shall be included in the SOI. Changes to the scope of work, methodologies, schedule, and project description, as well as change orders, will be discussed through direct communication between the parties to this Agreement and the consultant before any action is taken.

## **F. GENERAL AGREEMENTS**

The parties to this Agreement recognize and acknowledge that each agency must fulfill its statutory responsibilities, including permit decisions, in accordance with the DWPA, NEPA, CEQA and other applicable statutes. The parties to this Agreement also recognize that each agency's decisions may affect similar actions of the other agency if differing conditions are placed on the respective action. Both agencies agree to work together to minimize such conflicting occurrences. The agencies further agree to take whatever further steps they deem necessary, including further agreements or amendments to this MOA, in order to fulfill the purpose of this MOA.

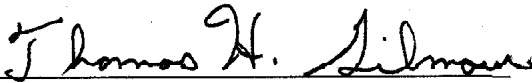
The parties to this MOA specifically understand that this is neither a contractual agreement nor a delegation of their respective responsibilities. Its purpose is to clarify an agreed upon cooperative approach. Any party may, upon notifying the other parties, withdraw from the MOA and proceed independently pursuant to the NEPA or the CEQA.

## G. EFFECTIVE DATE

This agreement will become effective on the date of last signature, whether it is by the USCG Assistant Commandant for Marine Safety, Security and Environmental Protection, the MARAD Director, Office of Ports and Domestic Shipping, or the CSLC Executive Officer.

## H. TERMINATION

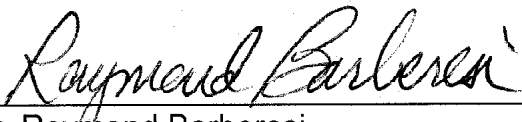
This Agreement shall expire upon mutual consent by all parties or may be terminated within 30 days of written notice by any of the below signatories, or their designees.



Rear Admiral Thomas H. Gilmour  
Assistant Commandant  
Marine Safety, Security and Environmental Protection  
U.S. Coast Guard  
Department of Homeland Security

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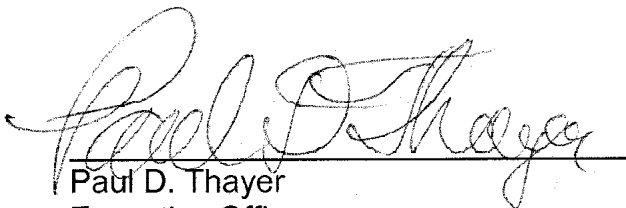
Date



Mr. Raymond Barberesi  
Director, Office of Ports and Domestic Shipping  
Maritime Administration  
U.S. Department of Transportation

NOV 25, 2003

Date



Paul D. Thayer  
Executive Officer  
California State Lands Commission

Dec. 5, 2003

Date

## **APPENDIX A<sup>2</sup>**

### **DETAILED RESPONSIBILITIES OF THE PARTIES FOR THE PREPARATION OF ENVIRONMENTAL DOCUMENTATION**

In addition to the responsibilities described in the main body of this Memorandum of Agreement, the parties to this Agreement shall carry out the following duties:

- a) Establish a timeline for completion of the Project in compliance with applicable law;
- b) Prepare a Joint Notice of Intent/Notice of Preparation (NOI/NOP) for the Project, to be published and circulated in the Federal Register and local and State newspapers as required under the NEPA and/or the CEQA;
- c) Prepare and maintain a project specific Interested Party mailing list to receive copies of letters and public documents prepared during the course of the deep water port license review and associated NEPA and CEQA efforts;
- d) Determine the format and content of the Statement of Intent (SOI) to complete the project-specific joint NEPA/CEQA document;
- e) Develop a selection process and select the third party consultant who responded to the SOI and will prepare and complete the project-specific joint NEPA/CEQA document;
- f) Determine the organization, scope and content of the project-specific joint NEPA/CEQA document to ensure that the requirements of Federal and State laws are satisfied, and that the statutory findings required of the agencies for their respective decisions on each license application can be made;
- g) Conduct a noticed public hearing/meeting for each proposed license to receive comment on the scope of work proposed for the EIR under CEQA;
- h) Review work performed by the consultant and determine whether the work is satisfactory and, if not, how best to correct the deficiencies in the work;
- i) Review and provide comments on the administrative (also called preliminary or interim) draft and administrative final joint NEPA/CEQA documents;
- j) Pursuant to DWPA, NEPA, and CEQA, conduct noticed public hearing/meetings in order to obtain comments on the joint NEPA/CEQA document from all appropriate Federal, State, and local agencies, and advisory agencies, and from the general public;
- k) Determine the adequacy of the consultant-prepared responses to comments on the project-specific joint NEPA/CEQA document, and jointly direct the consultant to finalize the responses to comments;

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<sup>2</sup> Specific for each deepwater port project.



In the event that the parties to this Agreement cannot reach agreement on a particular issue, the joint NEPA/CEQA document shall clearly reflect the view(s) of each party without identifying individual agency responsibility or authorship where differing viewpoints are presented.

The parties to this Agreement shall be notified in advance of all hearings/meetings and telephone conversations and shall receive copies of all correspondence that involves:

- additions or changes to the joint NEPA/CEQA document scope of work, schedule, or approved consultant team;
- comments on any joint NEPA/CEQA document deliverable;
- mitigation measures or development of project conditions that are applicable to other agencies' jurisdiction;
- modifications to the applications or the joint NEPA/CEQA document that are germane to any agency's policies; and
- changes in agency policy that affect the proposed project.